

115TH CONGRESS  
1ST SESSION

# H. R. 3726

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2017

Mr. MARCHANT (for himself, Mr. KIND, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stark Administrative  
5 Simplification Act of 2017”.

1 **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**  
2 **COMPLIANCE WITH STARK RULE UNDER**  
3 **MEDICARE.**

4 Section 1877 of the Social Security Act (42 U.S.C.  
5 1395nn) is amended by adding at the end the following  
6 new subsection:

7 “(j) SELF-DISCLOSURE PROTOCOLS.—

8 “(1) IN GENERAL.—Beginning one year after  
9 the date of the enactment of this subsection—

10 “(A) an entity or individual may volun-  
11 tarily disclose a compensation arrangement with  
12 actual or potential inadvertent technical non-  
13 compliance with subsection (a)(1) (as defined in  
14 paragraph (3)(G)) pursuant to either the self-  
15 referral disclosure protocol (defined in para-  
16 graph (2)) or the alternative protocol for tech-  
17 nical noncompliance under paragraph (3);

18 “(B) disclosures voluntarily withdrawn  
19 from the alternative protocol for technical non-  
20 compliance may be submitted to the self-refer-  
21 ral disclosure protocol; and

22 “(C) an entity that, prior to the establish-  
23 ment of the alternative protocol for technical  
24 noncompliance, disclosed to the self-referral dis-  
25 closure protocol a compensation arrangement  
26 that was in inadvertent technical noncompliance

1 with subsection (a)(1), may elect, not later than  
2 one year after such alternative protocol is estab-  
3 lished, to withdraw such disclosure from the  
4 self-referral disclosure protocol and instead sub-  
5 mit the disclosure to such alternative protocol.

6 “(2) SELF-REFERRAL DISCLOSURE PRO-  
7 TOCOL.—The term ‘self-referral disclosure protocol’  
8 or ‘SRDP’ means the protocol specified in section  
9 6409 of Public Law 111–148.

10 “(3) ALTERNATIVE PROTOCOL FOR INAD-  
11 VERTENT TECHNICAL NONCOMPLIANCE.—

12 “(A) IN GENERAL.—The Secretary shall  
13 establish, not later than one year after the date  
14 of the enactment of this subsection, an alter-  
15 native protocol for technical noncompliance (in  
16 this subsection referred to as the ‘APTN’) to  
17 enable entities to disclose arrangements that  
18 were previously in inadvertent technical non-  
19 compliance with subsection (a)(1) and, upon the  
20 Secretary’s acceptance of the disclosure, make  
21 payment of a civil monetary penalty. Payment  
22 of such civil monetary penalty for an arrange-  
23 ment shall resolve only overpayments due and  
24 owing as a result of such arrangement’s inad-  
25 vertent technical noncompliance with this sec-

1           tion. The provisions of section 6409 of Public  
2           Law 111–148 shall not apply to this subsection.

3           “(B) DISCLOSURE REQUIREMENTS.—Ar-  
4           rangements disclosed to the APTN must—

5                   “(i) involve only inadvertent technical  
6                   noncompliance with subsection (a)(1) that  
7                   was ended by termination or expiration of  
8                   the arrangement, or by action of the par-  
9                   ties to the arrangement to resolve the tech-  
10                  nical noncompliance, prior to the date of  
11                  submission of the disclosure to the APTN;

12                   “(ii) be made in the form and manner  
13                   specified by the Secretary on the public  
14                   Internet website of the Centers for Medi-  
15                   care & Medicaid Services and include de-  
16                   scriptions of—

17                           “(I) the compensation arrange-  
18                           ment that was in technical noncompli-  
19                           ance with subsection (a)(1);

20                           “(II) how and when the technical  
21                           noncompliance with subsection (a)(1)  
22                           was ended or the arrangement was  
23                           otherwise terminated; and

1                   “(III) how the remuneration paid  
2                   under the compensation arrangement  
3                   being disclosed was—

4                   “(aa) consistent with the  
5                   fair market value of the items  
6                   and services that were provided  
7                   under the compensation arrange-  
8                   ment; and

9                   “(bb) not determined in a  
10                  manner that directly or indirectly  
11                  takes into account the volume or  
12                  value of referrals or other busi-  
13                  ness generated between the par-  
14                  ties;

15                  “(iii) include a form settlement agree-  
16                  ment provided by the Secretary signed by  
17                  the entity; and

18                  “(iv) include a certification from the  
19                  entity that, to the best of the entity’s  
20                  knowledge, the information provided is  
21                  truthful information and is based on a  
22                  good faith effort to bring the matter to the  
23                  Secretary’s attention.

24                  “(C) ACCEPTANCE OR REJECTION OF DIS-  
25                  CLOSURE BY THE SECRETARY.—The following

1 rules shall apply to the acceptance or rejection  
2 of a disclosure under the APTN:

3 “(i) The Secretary shall accept or re-  
4 ject a complete, accurate, and timely dis-  
5 closure.

6 “(ii) Upon receipt of a disclosure, the  
7 Secretary shall notify the disclosing party  
8 of such receipt.

9 “(iii) The Secretary may request addi-  
10 tional information from the disclosing  
11 party.

12 “(iv) Upon acceptance by the Sec-  
13 retary, the Secretary shall notify the dis-  
14 closing party in writing of such acceptance.

15 “(v) The disclosure shall be rejected  
16 if—

17 “(I) the disclosing party fails to  
18 furnish the additional information re-  
19 quested by the Secretary in such form  
20 and manner as the Secretary may  
21 specify; or

22 “(II) in the Secretary’s sole de-  
23 termination, the noncompliance dis-  
24 closed did not meet the disclosure re-

1 requirements specified in subparagraph  
2 (B).

3 “(vi) The disclosure shall be accepted  
4 if the Secretary—

5 “(I) has issued a written notice  
6 to the disclosing party that the disclo-  
7 sure is determined to satisfy the re-  
8 quirements for disclosures under this  
9 section; or

10 “(II) has not rejected a complete,  
11 accurate, and timely disclosure that  
12 satisfies each of the requirements for  
13 disclosures under this section and 180  
14 calendar days have passed since noti-  
15 fication of receipt by the Secretary of  
16 the disclosure.

17 “(vii) In determining whether to ac-  
18 cept a disclosure, the Secretary may rea-  
19 sonably rely on the information and certifi-  
20 cations included in the disclosure.

21 “(D) WITHDRAWAL OF DISCLOSURE.—  
22 Prior to acceptance or rejection of a disclosure  
23 by the Secretary, an entity may voluntarily  
24 withdraw such disclosure from the APTN.

1           “(E) CIVIL MONETARY PENALTIES PURSU-  
2           ANT TO THE ALTERNATIVE PROTOCOL FOR  
3           TECHNICAL NONCOMPLIANCE.—

4           “(i) IN GENERAL.—Subject to clause  
5           (ii), for each arrangement disclosed under  
6           this subsection and accepted under sub-  
7           paragraph (C), the Secretary shall impose  
8           a single civil monetary penalty of—

9           “(I) \$5,000, in the case in which  
10           disclosure of the inadvertent tech-  
11           nically noncompliant compensation ar-  
12           rangement was submitted to the Sec-  
13           retary not later than the date that is  
14           one year after the initial date of inad-  
15           vertent technical noncompliance with  
16           subsection (a)(1); or

17           “(II) \$10,000, in the case in  
18           which the disclosure of the technically  
19           noncompliant compensation arrange-  
20           ment was submitted to the Sec-  
21           retary—

22           “(aa) after the date that is  
23           more than one year after the ini-  
24           tial date of the entity’s inad-

1           vertent technical noncompliance  
2           with subsection (a)(1); and

3                   “(bb) not after the date that  
4           is 3 years (or, in the case of a  
5           disclosure submitted after the  
6           5th year for which this sub-  
7           section applies, the date that is 2  
8           years) from the initial date of the  
9           entity’s inadvertent technical  
10          noncompliance with subsection  
11          (a)(1).

12                   “(ii) SPECIAL RULE FOR ENTITIES  
13          THAT DISCLOSED TO THE APTN AFTER  
14          WITHDRAWING A DISCLOSURE FROM THE  
15          SRDP.—In the case of an entity that elects  
16          under paragraph (1)(C) to withdraw a dis-  
17          closure from the self-referral disclosure  
18          protocol and instead submit the disclosure  
19          to the APTN under this subsection, in de-  
20          termining the applicable civil monetary  
21          penalty under clause (i), the date of dislo-  
22          sure to the self-referral disclosure protocol  
23          (as defined in paragraph (2)) shall be sub-  
24          stituted for the date of disclosure to the  
25          APTN.

1           “(F) RELATION TO ADVISORY OPINIONS.—  
2           The APTN shall be separate from the advisory  
3           opinion process set forth in regulations imple-  
4           menting subsection (g) of this section.

5           “(G) PUBLICATION ON INTERNET WEBSITE  
6           OF APTN INFORMATION.—Not later than one  
7           year after the date of the enactment of this sec-  
8           tion, the Secretary shall post information on the  
9           public Internet website of the Centers for Medi-  
10          care & Medicaid Services to inform relevant  
11          stakeholders of how to disclose and make pay-  
12          ment of a civil monetary penalty for inadvertent  
13          technical noncompliance with subsection (a)(1).

14          “(H) DEFINITIONS.—In this subsection:

15                 “(i) TECHNICAL NONCOMPLIANCE.—  
16                 The term ‘technical noncompliance with  
17                 subsection (a)(1)’ means, with respect to a  
18                 compensation arrangement, that—

19                         “(I) the arrangement is not  
20                         signed by one or more parties to the  
21                         arrangement;

22                         “(II) following the expiration of  
23                         the arrangement, the arrangement  
24                         was a holdover arrangement for a pe-

1                   riod longer than permitted in regula-  
2                   tions issued by the Secretary; or

3                   “(III) the contemporaneous writ-  
4                   ten documentation evidencing the  
5                   terms of the arrangement identifies  
6                   the parties to the arrangement and  
7                   the items, services, space, or equip-  
8                   ment, as applicable, but is not suffi-  
9                   cient to satisfy the writing require-  
10                  ment of an applicable exception.

11                  “(ii) INADVERTENT.—The term ‘inad-  
12                  vertent’ means, with respect to a com-  
13                  pensation arrangement that is in non-  
14                  compliance, that an entity that is a party  
15                  to the compensation arrangement did not  
16                  know or should not have known of the non-  
17                  compliance.

18                  “(I) ADMINISTRATION.—Chapter 35 of  
19                  title 44, United States Code, shall not apply to  
20                  this subsection.

21                  “(J) IMPLEMENTATION.—Notwithstanding  
22                  any other provision of law, the Secretary may  
23                  implement the provisions of this paragraph by  
24                  program instruction or otherwise.”.

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